

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WENDELL EARL POPEJOY,

Defendant-Appellant.

UNPUBLISHED

April 30, 2020

No. 346821

Ottawa Circuit Court

LC No. 18-041803-FC

Before: MARKEY, P.J., and JANSEN and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals his convictions of first-degree murder, MCL 750.316(1)(a), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to life imprisonment without the possibility of parole for the first-degree murder conviction, and a mandatory two years’ imprisonment for the felony-firearm conviction to be served consecutively to the sentence for first-degree murder. We affirm.

I. FACTUAL BACKGROUND

This case arises from the killing of Sheila Bonge. For several years before her death, there was an ongoing, bitter neighborhood dispute between Bonge and her neighbors. The record reflected that Bonge repeatedly harassed multiple neighbors by name-calling, yelling, “flipping the bird,” trespassing, snow blowing snow onto her neighbor’s driveways, honking her horn as she drove by their homes, driving on their grass, riling up her neighbor’s animals, and was even engaged in civil litigation with one set of neighbors over an easement at the time of her death.

Defendant admitted to killing Bonge on December 27, 2017. Defendant saw Bonge snow blowing from his kitchen window, and decided to get his handgun and walk out of his front door. Bonge did not see or hear defendant approach her from behind. Defendant shot Bonge once in the back of the head. Defendant then pushed Bonge’s snowblower back to her house, and returned to his house to retrieve his sled. Defendant picked Bonge up “like a sack of potatoes,” put her on the sled and slid her down the hill behind his house. Defendant then removed all of Bonge’s clothes and burned them in his burn barrel. Defendant used baby wipes to wipe Bonge’s blood off of his

sled. Later that night, defendant drove to a bridge overlooking a river, and threw in his disassembled gun.

Defendant was convicted by a jury of first-degree murder. This appeal followed.

II. INSTRUCTIONAL ERROR

Defendant argues that the trial court erred by not instructing the jury on the lesser included offense of voluntary manslaughter. We disagree.

This Court reviews a trial court's determination regarding the applicability of a jury instruction for an abuse of discretion. *People v Craft*, 325 Mich App 598, 604; 927 NW2d 708 (2018). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Id.*

A defendant has the right to "a properly instructed jury." *People v Mills*, 450 Mich 61, 80; 537 NW2d 909 (1995). "The trial court is required to instruct the jury with the law applicable to the case and fully and fairly present the case to the jury in an understandable manner." *Id.* An inferior-offense instruction is appropriate only when a rational view of the evidence supports a conviction of the lesser offense. *People v Mendoza*, 468 Mich 527, 545; 664 NW2d 685 (2003). Where, as a matter of law in a homicide prosecution, no reasonable jury could find that defendant's claimed provocation was adequate to mitigate the homicide from murder to manslaughter, the court may exclude evidence of provocation, and thereby, refuse to provide a jury instruction on voluntary manslaughter. *People v Pouncey*, 437 Mich 382, 387; 471 NW2d 346 (1991); *People v Sullivan*, 231 Mich App 510, 518; 586 NW2d 578 (1998). The reliability of the verdict is undermined by the trial court's error in failing to give a requested lesser included instruction when the evidence clearly supports the instruction; in other words, it is only when there is substantial evidence to support the requested instruction that an appellate court should reverse the conviction. See *People v Cornell*, 466 Mich 335, 355; 646 NW2d 127 (2002).

First-degree murder is defined by MCL 750.316 and includes, in relevant part, a killing "by means of poison, lying in wait, or any other willful, deliberate, and premeditated killing." MCL 750.316(1)(a). "All other murders are murder in the second degree," the elements of which are a death, caused by defendant's acts, with malice, and without justification. MCL 750.317; *Mendoza*, 468 Mich at 534. Manslaughter is a killing without malice. *Mendoza*, 468 Mich at 534. Voluntary manslaughter requires that a defendant be found to have had an intent to kill and to this extent, the offense parallels the crime of murder; but, it is distinguished from murder by an absence of malice. *People v Townes*, 391 Mich 578, 589; 218 NW2d 136 (1974). "To reduce a homicide to voluntary manslaughter, the factfinder must determine from an examination of all of the circumstances surrounding the killing that malice was negated by provocation and the homicide was committed in the heat of passion." *Id.* "The word 'passion,' in the context of voluntary manslaughter describes a state of mind incapable of cool reflection." *Id.* at n 3. "[T]here cannot be a lapse of time during which a reasonable person could control his passions." *Pouncey*, 437 Mich at 388.

Defendant argues that the jury should have been instructed on the lesser included offense of voluntary manslaughter because there was overwhelming evidence presented showing Bonge

provoked defendant, and that defendant acted out of passion. Indeed, Bonge and defendant had engaged in verbal altercations in the past, and the overwhelming evidence at trial indicated that Bonge was a neighborhood nuisance. However, defendant and Bonge had not even interacted with each other on the day Bonge was killed. Defendant explained that he had watched Bonge snow blowing on her property while drinking coffee in his kitchen. Defendant then went into his bedroom to retrieve his gun, walked outside his house and down his driveway to some trees, where defendant then snuck up on Bonge and shot her once in the back of the head. Bonge was facing the opposite direction and never saw defendant coming. A rational review of this evidence does not support a finding that the killing occurred in the heat of passion; rather, defendant had ample time to plan the killing. Thus, we conclude that the trial court's decision not to instruct the jury on the lesser included offense of voluntary manslaughter was not an abuse of discretion.

Affirmed.

/s/ Jane E. Markey
/s/ Kathleen Jansen
/s/ Mark T. Boonstra